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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,528

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Walter Breyer

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BACHMAN & LAPOINTE, P.C.

900 CHAPEL STREET

SUITE 1201

NEW HAVEN, CT 06510

EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/593,528	<b>Applicant(s)</b> BREYER, WALTER	
	<b>Examiner</b> Clark F. Dexter	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) 20-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-19 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/25/07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group IV (claims 17-19 and 30-32) in the reply filed on May 14, 2009 is acknowledged. Claims 20-29 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

3. The information disclosure statement filed on April 25, 2007 has been received and the references listed thereon have been considered.

### ***Claim Objections***

4. Claims 18, 19/18 and (30-32)/18 are objected to because of the following informalities:

In claim 18, line 7, the recitation "by means of" is not sufficiently clear as to what is being set forth, particularly as to whether it is intended to invoke 35 USC 112, 6<sup>th</sup> paragraph, and it is suggested to delete "means of".

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In claim 19, line 3, the recitation "by means of" is not sufficiently clear as to what is being set forth as described above for claim 18.

In claim 30, lines 3 and 4, the recitation "by means of" is not sufficiently clear as to what is being set forth as described above for claim 18.

In claim 32, line 5, the recitation "by means of" is not sufficiently clear as to what is being set forth as described above for claim 18.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 17-19 and 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17, lines 5-6, the recitation "is formed as a linear motor" is vague and indefinite as to what is being set forth, particularly as to whether a separate linear motor is being claimed or whether the carriage and the cutting device somehow form a linear motor.

In claim 18, line 5, the recitation "comprising" is vague as to what it refers (i.e., the cutting device or the carriage); in lines 6-9, the recitation "is controlled and/or regulated as the slave by means of a transporting mechanism which is arranged upstream of the cutting device, as the master" renders the claims vague and indefinite

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because "and/or" is vague as to what is the scope of the recitation, and because the invention is being positively defined in terms of the transporting mechanism which is not part of the claimed invention.

In claim 30, line 30, the recitation "a linear guide" is vague and indefinite as to whether it refers to the linear guide in each of claims 17 and 18 or to another such linear guide.

In claim 31, line 5, "the linear guides" lacks positive antecedent basis.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 17-19, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by German Publication 38 03 553 (hereafter GP '553).

Regarding claim 17 and the claims dependent therefrom, GP '553 discloses a cutting mechanism with every structural limitation of the claimed invention as best understood from the claims including:

a carriage (e.g., 22, 25) which can be moved back and forth with respect to a base (e.g. 10),

a cutting device (e.g. 26, 27) mounted on the carriage,

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wherein the carriage with the mounted cutting device is formed as a linear motor (e.g., the presence of the carriage and cutting device meets this recitation since they "form" a linear motor in at least the same way as the present invention) and is movable with respect to the base;

[claim 19 (from 17)] wherein the carriage is moved back and forth with respect to a base in a linear direction by means of at least one linear guide (e.g., 16).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 18, 19 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Publication 38 03 553 (hereafter GP '553) in view of the publication "Wave-High Acceleration Linear PM motor" (hereafter "the Wave publication").

Regarding claim 18 and the claims dependent therefrom, GP '553 discloses a cutting mechanism with almost every structural limitation of the claimed invention including:

a carriage (e.g., 22, 25) which can be moved back and forth with respect to a base (e.g. 10),

a cutting device (e.g. 26, 27) mounted on the carriage,

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wherein a linear back and forth movement of the carriage with respect to the base is controlled and/or regulated as the slave by means of a transporting mechanism which is arranged upstream of the cutting device, as the master;

[claim 19 (from 18)] wherein the carriage is moved back and forth with respect to a base in a linear direction by means of at least one linear guide (e.g., 16).

GP '553 lacks a linear motor and the specific configuration thereof including:

[claim 30 (from 19)] wherein linear movement of the carriage with respect to the base can be regulated and controlled by means of a linear guide and is activated by means of the at least one coil assigned to the base, with regard to acceleration, negative acceleration and with regard to the maximum deflection;

[claim 31 (from 30)] wherein the carriage can be moved back and forth with respect to the fixed base virtually without any contact in an actively driven manner over at least one magnetic track, which is provided inside or outside the linear guides, parallel to the latter;

[claim 32 (from 31)] wherein the base and/or the linear guide is assigned an incremental or inductive length measuring system, which interacts with the carriage for exact positional determination, it being possible by means of this positional determination for the speed of the carriage to be determined and regulated.

However, the Examiner takes Official notice that such linear motors are old and well known in the art and provide various well known benefits. For example, the Wave publication teaches that the effects of such linear motors when compared with a spindle

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drive include extremely rapid positioning, extremely good dynamic behavior and no wear. The publication further teaches that linear motors have long been used in areas where good dynamic performance and a low degree of wear is required. The prior art of record discloses other examples of such linear motors with the same or similar features of the claimed invention. Therefore, it would have been obvious to one having ordinary skill in the art to replace the spindle drive of GP '553 with such a linear motor to gain the well known benefits taught by the Wave publication including those benefits described above.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Clark F. Dexter/  
Primary Examiner, Art Unit 3724**

cfd  
July 31, 2009